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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

In re application of James T. Doubet

Serial No.: 10/668,533

Filed: September 23, 2003

For: **ENABLING COUNTRY OF ORIGIN LABELING AND VERIFICATION
FOR LIVESTOCK PRODUCTS**

Art Unit: 3687

Examiner: Oluseye Iwarere

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For Appellant

APPELLANT'S REPLY BRIEF

This Reply Brief is submitted in furtherance of the Appeal Brief that was filed in this case on May 11, 2009, and responds to the Examiner's Answer dated September 3, 2009.

ARGUMENTS

1. Appellant filed an Appeal Brief on May 11, 2009 (hereinafter, "Appeal Brief"). This Reply Brief responds to the Examiner's Answer dated September 3, 2009 (hereinafter, "the Examiner's Answer"), with reference to Appellant's Appeal Brief.
2. Appellant respectfully notes that new commentary is provided in the Examiner's Answer (as contrasted to the Final Rejection dated January 9, 2009) when discussing Appellant's claim language for various claims. In particular, see Section (10), "Response to Argument", on pages 16 - 21 of the Examiner's Answer. This new commentary in Section (10) will now be discussed.
3. With regard to Claim 1, page 16, lines 9 - 11 of the Examiner's Answer notes that the claim language states "a unique identification" (referring to line 5 of Claim 1) and that "the art" states "a unique alphanumeric code or a unique decimal code". However, as Appellant has repeatedly explained in the Appeal Brief, Cerkendall's "unique" code as discussed in the cited para [0020] is a unique code emitted by a device that is carried by (or in) an animal. See, for example, paras. 26 - 31 of the Appeal Brief. Clearly, the purpose of having the device in Cerkendall emit the same unique code is so that a particular animal (to which the device is attached) can be uniquely identified. Uniquely identifying an animal, as discussed by Cerkendall, is not the same as uniquely identifying a transfer of animals, as recited in Appellant's Claim 1. Furthermore, Appellant's claim language does not merely state "a unique identification", but rather – when considered in context – states that a unique passport identifier is assigned to an animal passport (Claim 1, line 4), thereby providing a unique identification of the transfer (Claim

1, line 5) of animals from a transferor to a transferee (Claim 1, lines 2 - 3). This is distinct from Cerkendall's unique identifiers of animals.

4. Page 16, lines 15 - 18 of the Examiner's Answer discusses transfers to "PEN-1", stating that "each transfer to PEN-1 would be unique, to each animal, because each animal is identified individually". Appellant respectfully disagrees with this assertion. Suppose that cows are identified using RFID transponders carried on ear tags or collars worn by the cows – or perhaps the transponders are implanted in the cows. (See para. 27 of Appellant's Appeal Brief for citations to discussions of such devices in Cerkendall.) Further suppose that a cow whose RFID transponder emits the unique identifier "010101" and another cow whose RFID transponder emits the unique identifier "020202" are both transferred to PEN-1. This may be detected, for example, by placing an RFID reader in a chute through which the cows must pass in order to enter PEN-1. Cerkendall, para. [0110].¹ The RFID reader will therefore detect the emitted unique codes of "010101" and "020202" as the cows pass through the chute. However, suppose that these cows are then moved to a different pen and pass through a different chute in order to enter that pen. The RFID reader in this second chute will again detect the animal-specific identifiers of "010101" and "020202" for these cows. Accordingly, it is clear that the identifiers in Cerkendall uniquely identify the animals, and do not *uniquely* identify the transfers of those animals. Thus, Cerkendall's disclosed approach cannot be aligned to Appellant's claim language, and in particular, cannot be aligned to the "repeating the creating and assigning ..." (Claim 1, lines 6 - 9)

¹ See also Cerkendall's Fig. 37, reference numbers 2100 - 2200 and corresponding text in para. [0325], which discusses obtaining an animal's unique code from its RFID transponder.

because Curkendall is silent on assigning a unique passport identifier “for each of at least one subsequent transfer of one or more of the animals” (Claim 1, lines 6 - 7), noting that this unique passport identifier assigned for the subsequent transfer on lines 6 - 7 of Claim 1 is necessarily different (i.e., because of the uniqueness) from the unique passport identifier assigned for the transfer recited on lines 2 - 3 of Claim 1.

5. Page 17, lines 5 - 7 of the Examiner’s Answer assert that “performance databases for all key livestock events”, quoting from para. [0029], “would encompass recent transfers” (apparently referring to lines 6 - 9 of Claim 1). Appellant respectfully submits that there is no basis in Curkendall for interpreting the statement “An object of the present invention is to provide complete source verification and performance databases for all key livestock events.” (para. [0029], last sentence) as disclosing the “subsequent transfers” and “record[ing] the unique passport identifier assigned to each most-recent previous transfer ...” as recited on lines 6 - 9 of Claim 1. The analysis in the Examiner’s Answer therefore violates the prohibition against “read[ing] into the prior art reference teachings that are not there” as stated in the holding from *Motorola, Inc. v. Interdigital Technology Corp.* (which has been set out in para. 21 of Appellant’s Appeal Brief).

6. With regard to Claim 11, page 18, lines 3 - 4 of the Examiner’s Answer state that para. [0011] of Curkendall “discusses tracking individual animals”. As Appellant has stated in para. 43 of the Appeal Brief, Appellant agrees that para. [0011] discusses tracking individual animals. However, para. [0011] is silent on an animal passport that was created to represent a transfer of a

animals (in the plural), as recited in Claim 1, and then further specifying the individual animal identifications of those transferred animals on the animal passport, as recited in Claim 11. With reference to the sample animal passport 200 in Appellant's Fig. 2, for example, the unique passport identifier "03000001" (see 205) is assigned (Claim 1, lines 4 - 5) to represent the transfer for which this passport was created (Claim 1, lines 2 - 3). This sample passport 200 represents a transfer of 100 animals (see 210). Claim 11 states, with reference to this example, that 100 "individual animal identifications" (i.e., the identification of each of the transferred animals) are further specified on passport 200 (although this has not been illustrated). Cerkendall's para. [0011] clearly does not disclose such specifying of animal identifications on animal passports.

7. With regard to Claim 12, page 18, lines 9 - 10 of the Examiner's Answer state that Cerkendall's para. [0029] "discusses complete source verification and performance databases for all key livestock events". Appellant respectfully submits that there is no basis in Cerkendall for interpreting the statement "An object of the present invention is to provide complete source verification and performance databases for all key livestock events." (para. [0029], last sentence) as disclosing "additional animals are included in one or more of the subsequent transfers" (Claim 12, lines 1 - 2) and recording the "unique passport identifier assigned to each most-recent previous transfer of those additional animals" on the animal passport created for such subsequent transfers (Claim 12, lines 2 - 4). Therefore, Appellant respectfully submits that the analysis in the Examiner's Answer violates the prohibition against "read[ing] into the prior art reference teachings that are not there" as stated in the holding from *Motorola, Inc. v. Interdigital Technology Corp.* (which has been set out in para. 21 of Appellant's Appeal Brief).

8. With regard to Claim 13, page 18, lines 15 - 16 of the Examiner's Answer cites para. [0011] as stating "and all other significant events that have occurred in the animal's life". However, taken in context of paras. [0010] - [0011] of Cerkendall, this sentence fragment is stating "In order to support these objectives [to have a calf from each cow each year; to have healthy, vigorous calves with the highest weaning weights at the lowest cost; and to produce the best meat, by factors such as tenderness and taste, at the lowest cost]², the producer is interested in ... recording treatments, vaccinations, and other significant events that have occurred in the animal's life."³. Appellant respectfully submits that the assertion in the Examiner's Answer that this text discloses Appellant's recited "animal passports are created for each transfer [of animals] during a lifetime of the animals" (referring to Claim 13, lines 1 - 2) is reading into Cerkendall teachings which simply are not there, thereby violating the prohibition against "read[ing] into the prior art reference teachings that are not there" as stated in the holding from *Motorola, Inc. v. Interdigital Technology Corp.* (which has been set out in para. 21 of Appellant's Appeal Brief).

9. Page 19, lines 1 - 3 of the Examiner's Answer state, with regard to claim language recited on lines 9 - 11 of Claim 13, that Cerkendall's para. [0363] "discloses 16 points including origin, which is construed as including the country as a point of origin". Appellant's Claim 13 does not merely recite "country" or "origin". Instead, lines 9 - 11 recite "determining a country of origin ... using each unique passport identifier associated therewith to determine all locations in which the selected ones [of the animals] have been located ..." (emphasis added). Where does Cerkendall

² See antecedent in para. [0010], last 5 lines.

³ See para. [0011], all lines.

disclose using unique passport identifiers (which are uniquely associated with transfers, as recited in Claim 1) to determine locations of animals?

10. With regard to Claim 14, page 19, lines 10 - 11 of the Examiner's Answer state, with regard to claim language recited on lines 2 - 5 of Claim 14, that Curkendall's para. [0363] "discloses 16 points including origin, which is construed as including the country as a point of origin". Appellant's Claim 14 does not merely recite "country" or "origin". See para. 56 of the Appeal Brief, which sets out claim recitations from Claim 14 (such as "how many animals were transferred" and so forth) which are not addressed in the originally-cited para. [0131]; these claim recitations are also not disclosed by the "16 points" text from para. [0363].

11. With regard to Claim 15, page 19, lines 16 - 17 of the Examiner's Answer state, with regard to claim language recited on lines 3 - 6 of Claim 15, that Curkendall's para. [0363] (stated incorrectly as para. [0636] in the Examiner's Answer) "discloses 16 points including origin". Appellant's Claim 15 does not merely recite "origin". See para. 62 of the Appeal Brief, which sets out claim recitations from Claim 15 (such as "how many animals are represented by the transfer" and so forth) which are not addressed in the originally-cited para. [0027]; these claim recitations are also not disclosed by the "16 points" text from para. [0363].

12. Page 20, lines 1 - 2 of the Examiner's Answer state, with regard to the "constructing a chain of transfers ... using each of the most-recent previous unique passport identifiers recorded on the animal passports ..." claim language from lines 7 - 10 of Claim 15, that Curkendall's para.

[0011] “explicitly discusses ‘movement and ownership changes’” (emphasis added). Appellant respectfully notes that what is “explicitly” stated in para. [0011] regarding movement is “In order to support these objectives [to have a calf from each cow each year; to have healthy, vigorous calves with the highest weaning weights at the lowest cost; and to produce the best meat, by factors such as tenderness and taste, at the lowest cost]⁴, the producer is interested in efficient systems for identifying and tracking individual animals as they rotate through the producer’s pastures ...”⁵. Appellant finds no discussion in para. [0011] of ownership changes, in contrast to the assertion in the Examiner’s Answer. Appellant respectfully submits that a discussion of animals rotating through a producer’s pastures cannot be equated to the “constructing a chain of transfers ... using each of the most-recent previous unique passport identifiers ...” claim language from lines 7 - 10 of Claim 15. Therefore, the assertion in the Examiner’s Answer with regard to para. [0011] of Cerkendall violates the prohibition against “read[ing] into the prior art reference teachings that are not there” as stated in the holding from *Motorola, Inc. v. Interdigital Technology Corp.* (which has been set out in para. 21 of Appellant’s Appeal Brief).

13. With regard to Claim 16, page 20, lines 4 - 5 of the Examiner’s Answer cite page 29 of the Appeal Brief as arguing that “Cerkendall does not disclose all of the elements recited therein”. This is apparently a reference to para. 71 of the Appeal Brief, which is introductory and does not discuss individual claim elements from Claim 16. Accordingly, Appellant is unable to determine which of the subsequent paragraphs 72 - 83 from the Appeal Brief is being referenced in the text

⁴ See antecedent in para. [0010], last 5 lines.

⁵ See para. [0011], lines 1 - 4.

on page 20, lines 6 - 8 of the Examiner's Answer. However, Appellant respectfully notes that page 20, lines 7 - 8 of the Examiner's Answer state "... the unique event Id, which is a transfer" (emphasis added), and Appellant notes that "Unique event ID" is associated with reference number **691b** in **Fig. 63**. Contradicting this assertion that the "Unique event ID" is a transfer, page 20, lines 18 - 19 of the Examiner's Answer assert that "the event ... is the transfer" (emphasis added), and **Fig. 63** depicts "Event" as being associated with reference number **691e**. Thus, it is entirely unclear whether reference number **691b** or reference number **691e** is asserted as being a transfer.

14. With regard to Claim 17, page 20, lines 12 - 14 of the Examiner's Answer assert that "performance databases for all key livestock events", quoting from para. [0029], "would encompass recent transfers". Appellant respectfully submits that there is no basis in Cerkendall for interpreting the statement "An object of the present invention is to provide complete source verification and performance databases for all key livestock events." (para. [0029], last sentence) as disclosing anything about recent transfers, and the analysis in the Examiner's Answer therefore violates the prohibition against "read[ing] into the prior art reference teachings that are not there" as stated in the holding from *Motorola, Inc. v. Interdigital Technology Corp.* (which has been set out in para. 21 of Appellant's Appeal Brief).

15. With regard to Claim 18, page 20, lines 16 - 17 of the Examiner's Answer cite page 36 of the Appeal Brief as arguing that "Cerkendall does not disclose all of the elements recited therein". This is apparently a reference to para. 89 of the Appeal Brief, which is introductory and does not

discuss individual claim elements from Claim 18. Accordingly, Appellant is unable to determine which of the subsequent paragraphs 90 - 100 from the Appeal Brief is being referenced in the text on page 20, lines 18 - 19 of the Examiner's Answer. However, Appellant respectfully notes that page 20, lines 18 - 19 of the Examiner's Answer state "... the event which is the transfer" (emphasis added), and Appellant notes that "Event" is associated with reference number **691e** in Fig. 63. Contradicting this assertion that the "Event" is the transfer, page 20, lines 7 - 8 of the Examiner's Answer assert that "the unique event Id ... is a transfer" (emphasis added), and Fig. 63 depicts "Unique event ID" as being associated with reference number **691b**. Thus, it is entirely unclear whether reference number **691b** or reference number **691e** is asserted as being a transfer.

16. With regard to Claim 19, page 21, lines 6 - 7 of the Examiner's Answer state that Curkendall's para. [0329] discusses "the number of animals in a group and the number of animals to be transferred". Appellant respectfully notes that para. [0329] is discussing a software program that transfers data records. See the first sentence of para. [0329], stating "The software also provides a component for transferring animal data from one entity to another." (emphasis added). Clearly, this is not the same as the "subsequent transfers" recited in Appellant's Claim 19⁶, which are transfers of animals and not transfers of data about animals. While the second sentence of para. [0329] does refer to "determin[ing] the number of animals in a group and the number of animals to be transferred", Appellant respectfully submits that it is clear, in the overall context of para. [0329], that this is a reference to transferring data records for a group of animals,

⁶ See Claim 19, lines 1 - 2, "... wherein additional animals are included in one or more of the subsequent transfers".

which is distinct from Appellant's transfers of animals. See also the third (and final) sentence of para. [0329], stating "A new event may be applied to the animal records showing that records were transferred to one entity from another at step 5000."

17. With regard to Claim 21, page 21, lines 13 - 14 of the Examiner's Answer state that Curkendall's para. [0329] discusses "the number of animals in a group and the number of animals to be transferred". See Appellant's remarks above in para. 16, demonstrating that para. [0329] is discussing a software program that transfers data records. This is not the same as the transfers of animals recited in Appellant's Claim 21, and does not disclose the "count of the animals" discussed at lines 10 - 11 on page 20 of the Examiner's Answer (as further discussed in para. 108 of the Appeal Brief). Page 21, lines 14 - 15 of the Examiner's Answer state that Curkendall's para. [0022] discusses "several forms of electronic identifiers". However, these electronic identifiers are used to identify animals, which is not the same as a unique identifier of a transfer as recited on lines 2 - 5 and lines 8 - 10 of Claim 21, and the electronic identifiers do not disclose the "two different passport identifiers" discussed at line 11 of the Examiner's Answer. (See paras. 26 - 31 of the Appeal Brief, where the "electronic identifiers" of Curkendall are discussed in detail, as well as paras. 3 - 4, above, which also discuss these identifiers.) Finally, page 21, lines 16 - 18 of the Examiner's Answer state that Curkendall's para. [0363] "discloses 16 points including origin, which is construed as including the country as a point of origin". However, Appellant's Claim 21 does not merely recite "origin" or "country". See para. 119 of the Appeal Brief, which sets out claim recitations from Claim 21 (such as "by comparing ... the location to the particular country ..." and so forth) which are not addressed in the originally-cited **Fig. 63** or the originally-cited

para. [0131]; these claim recitations are also not disclosed by the “16 points” text from para. [0363].

18. In view of paragraphs 3 - 17 above (as well as the arguments presented in Appellant’s Appeal Brief), Appellant respectfully submits that his Claims 1- 19 and 21 are not anticipated by Curkendall.

19. Appellant also respectfully notes that, in addition to the test for anticipation set out in paras. 20 - 21 of the Appeal Brief, other well-known holdings state this test using different wording. In particular, the holding from *Trintec Indus. v. Top-U.S.A. Corp.*⁷ states that a finding of anticipation requires absolute identity for each and every element set forth in the claimed invention, and the holding from *Scripps Clinic & Research Foundation v. Genentech Inc.*⁸ states that a finding of anticipation requires that there must be no difference between the claimed invention and the disclosure of the cited reference as viewed by one of ordinary skill in the art. The arguments presented herein and in the Appeal Brief clearly demonstrate that Curkendall does not disclose all elements of Appellant’s claims with absolute identity, and these arguments also demonstrate that there are differences between the claimed invention and the disclosure of Curkendall. Accordingly, Appellant respectfully submits that Claims 1 - 19 and 21 are not anticipated by Curkendall for these reasons as well.

⁷ *Trintec Indus. v. Top-U.S.A. Corp.*, 63 U.S.P.Q.2d 1597 (Fed. Cir. 2002).

⁸ *Scripps Clinic & Research Foundation v. Genentech Inc.*, 927 F.2d 1565, 1576, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)

20. Without more, Appellant respectfully submits that all Claims 1 - 19 and 21 are patentable, according to *In re Oetiker*, 24 USPQ 2d 1443, 1444 (Fed. Cir. 1992), which held

If the examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent.

CONCLUSION

In view of the above, Appellant respectfully submits that the rejection of all appealed Claims 1 - 19 and 21 is overcome. Accordingly, it is respectfully urged that the rejection of appealed Claims 1 - 19 and 21 not be sustained.

Respectfully submitted,

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